



# CHAPTER VIII : REVIEW HEARINGS

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## A. Review Hearings

### 1. Introduction

Review hearings are **critical** to timely completion of case plans and permanency plans – to timely reunification of the family, or to timely identification of those families that will not be able to reunite, and to timely permanent placement of the child with a new family.

Review hearings are the court proceedings which take place after approval of the case plan or permanency plan, in which the court comprehensively reviews the status of the case. Review is vital to cases involving each child within the court's jurisdiction, whether the child is placed in the custody of the agency, or under the supervision of the agency in the child's own home.

At the adjudicatory hearing, if the court did not find that the parents subjected the child to aggravated circumstances, then the original case plan approved at the planning hearing included both a reunification plan, and an alternative permanency plan. The case plan and the planning hearing are discussed earlier in this chapter, in section B.

At the adjudicatory hearing, if the court did find that the parents subjected to the child to aggravated circumstances, then a permanency plan was approved at the permanency (that does not include reunification). The permanency plan and the permanency hearing are discussed earlier in this chapter, in section C.

The reunification component of the case plan should have identified the issues that need to be addressed before the child can safely be returned home; the specific tasks to be completed by the parties to address those issues, including services to be provided and deadlines for completing the tasks, and other appropriate details. The permanency plan should have identified the options for other permanent placement of the child, the advantages and disadvantages of the options for placement, recommendations as to the placement that is in the child's best interest, the actions necessary to implement that placement, and deadlines for those actions.

Review hearings examine progress made by the participants on the plan. They also provide an opportunity for correction and revision of the plan. The purpose of review hearings is to make sure that cases progress and that children spend as short a time as possible in foster care. No matter how carefully initial case planning is examined at the planning hearing, periodic review is needed to keep cases moving toward successful completion.

Review hearings should re-examine long-term case goals and change any which are no longer appropriate. Just as review hearings should hasten family reunification when possible, they should also help identify cases in which reunification should be discarded as a goal because a child cannot safely be returned home in a timely fashion.

Review hearings are necessary because continuation of a child in foster care for an extended time has a negative affect on a child and family. A child in foster care forms new relationships which may weaken his or her emotional ties to biological family members. A child shifted among foster homes may lose the ability to form strong emotional bonds with a permanent family.<sup>1</sup> A careful decision concerning the future of every child is needed as soon as possible. Review hearings can help ensure that decisions concerning a child's future are made at regular intervals and implemented expeditiously.

Review hearings provide regular judicial oversight of children in foster care and can help judges identify inadequacies in government's response to child abuse and neglect. For example, incomplete case plans can prolong foster care placement by failing to clearly specify what each party must do to facilitate family reunification. Agency case plans may be based on boilerplate forms which fail to adequately document a case. A plan may be developed solely by agency staff, without the collaboration of the parents, the child, or the guardian ad litem. A plan may fail to specify agency services or particular behaviors and changes expected of the parents.

Unresolved case disputes may block case planning progress. Each party may be proceeding unilaterally without confronting a disputed issue, although the dispute may constitute a roadblock to family reunification. When agency caseloads are high, cases may be neglected. If things are going "smoothly" in a child's foster home, appropriate attention may not be paid to family rehabilitation and progress toward reunification.

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<sup>1</sup> M. Rutter, *MATERNAL DEPRIVATION REASSESSED*, 179-197 (England: Harmondsworth, Penguin, 1981); J. Bowlby, *ATTACHMENT AND LOSS* (New York: Basic Books, 1973); J. Goldstein, A Freud and A. Solnit, *BEYOND THE BEST INTEREST OF THE CHILD*, 2d ed. (New York: Free Press, Macmillan 1979).

The agency may unnecessarily restrict parent-child contacts, accelerating breakdown of the parent-child relationship. Frequent parental visitation is essential but burdens agency caseworkers. Parents may be unaware that they can challenge visitation arrangements and may become discouraged by the terms imposed.

Agencies may fail to take timely action to move children out of foster care. Such inertia may be due to caution, indecision, or subtle incentives to maintain the legal status quo. Bringing a termination of parental rights proceeding is time consuming and may even appear forbidding to individual caseworkers. Without prodding by foster care review, workers may forego legal action.

Effective review hearings can address each of these problems and can improve planning for children. Judicial review helps a case progress by requiring the participants to set timetables, take specific action, and make decisions. Review hearings provide a forum for the parents, helping assure that their viewpoint is considered in case planning. Through careful scrutiny of the case plan by the attorneys and the court, case content and planning problems can be identified. Terms of the plan can be specified so that all parties understand their obligations and the court can assess progress.

Regular and thorough review hearings create incentives for the agency to make decisions concerning the permanent status of a child. When the review hearing is challenging and demanding, greater consideration is given to the examination of all placement options. Review hearings also create a valuable record of the actions of the parents and agency. Current information is put on the record and is more likely to be freely exchanged at a review than in proceedings to terminate parental rights or to compel family reunification.

Unfortunately, there are a number of formidable pitfalls that can thwart effective review hearings. Regular review hearings consume a great deal of time. Careful docket management and appropriate judicial caseloads are needed to prevent caseworkers, parents, attorneys, and other participants from having to spend long hours in the courthouse waiting for review.

Reviews can malfunction as a rubber stamp of agency recommendations or produce arbitrary decisions based on inadequate information. Effective review requires adequate court time and properly paid and trained lawyers to collectively determine what information comes before the court. Lawyers must be expected to do their job and come to court with a clear position on the case. Guardians ad litem should be prepared to make a recommendation as to the best interests of the child.

Irregular review may inhibit agency case planning. Long delays between court hearings and unnecessarily complex court orders may deprive the agency and the parents of the flexibility needed to move forward. For example, if a court orders parents to participate in a particular program, which proves to be inappropriate, the parent is under a continuing obligation to remain in the program until the case is brought back to court. The participants must have the means to obtain timely review.

Federal law requires that reviews be conducted by either a court or an “administrative body,” such as an agency team or a panel of volunteer citizen reviewers. It is optional under federal law whether courts conduct the routine review hearings.<sup>2</sup> Federal law contemplates a routine but thorough review of case progress to make sure cases are not neglected and, if necessary, to refine case plans. Specifically, review is:

...to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating a placement in foster care and to project a likely date by which the child may be returned to the home or placed for adoption or legal custody.<sup>3</sup>

Idaho law requires the court to conduct a review hearing no later than six months after entry of the order finding the child to be within the jurisdiction of the Child Protective Act, and every six months thereafter so long as the child is in the custody of the agency.<sup>4</sup> Recommended best practice is for the court to conduct regular review hearings in all cases where the child is found to be within the jurisdiction of the act, whether the child is placed in the legal custody of the agency or placed under protective supervision of the agency in the child’s own home.

### **2. Timing of Review**

Timetables for review hearings are governed by both federal and state statute. Federal law specifies that review of children in foster care, by a court or administrative body, must occur at least once every six months.<sup>5</sup>

Idaho law requires that a hearing for review of the child’s case plan or permanency plan be held no later than six months after entry of the decree finding the child within the jurisdiction of the child protective act and every six months thereafter so long as the child is in the custody of the agency.<sup>6</sup> The court has the discretion to conduct review hearings more frequently.

Recommended best practice is to conduct review hearings at least once three months; unless there is good reason in a particular case to schedule reviews less frequently. Recommended best practice is to conduct regular review hearings in all cases where the child is found to be within the jurisdiction of the Child Protective Act, including those where the child is placed under agency supervision in the child’s home, and not only those where the child is placed in the custody of the agency.

As in all child protective proceedings, the court should have a “just say no” policy on continuances. If a continuance is necessary, it should be for a short period of time, and

<sup>2</sup> See 42 U.S.C. §§ 675(5)(B), 675(6).

<sup>3</sup> See 42 USC §675(5)(B).

<sup>4</sup> Idaho Code §16-1611(c).

<sup>5</sup> See 42 USC §675(5)(B).

<sup>6</sup> Idaho Code §16-1611(c).

the court should enter appropriate orders to ensure that all parties are prepared to proceed on the new date.

### **3. Agreements by the Parties**

Whenever issues presented at a review are stipulated rather than tried by the court, the court should take the time to thoroughly review the agreement with the participants. The court should ensure that all review issues have been thoroughly considered by all participants, especially both parents, if involved. If the parties' agreement is not comprehensive, the court may need to hear evidence to resolve the disputes. The court might also adjourn the hearing for a short time (such as one day) to give the parties time to resolve issues or present them to the court for consideration.

If the court conducts frequent review hearings, any agreed statement of facts should convey the recent history of the case. The history should include an agreed statement concerning services provided to the child and family since the last hearing, actions taken by the parents in accord with the case plan, and progress made toward ending state intervention. This provides a definitive record of what has occurred since the previous hearing. This record will be invaluable later in the case when it is necessary to decide whether to reunite the family or terminate parental rights.

If the parties have reached agreement as to future steps to be taken, the court should either make sure that the agreement is comprehensive or resolve any issues not considered. A comprehensive agreement might include such issues as placement, services to the child, services to the family, visitation (where applicable), agency oversight of the family, location of missing parents, determination of paternity, etc. There is a more complete listing and discussion of issues to be addressed during review later in this chapter, in Part D.5 below. )

### **4. Who Should be Present**

#### **a) Judge**

It is important that review hearings are conducted by the same judge who hears other stages of the proceedings. The involvement of one judge creates consistency in the directions given the family and the agency, avoids rehashing old arguments, and allows the judge or judicial officer who presides over the review hearing to be thoroughly familiar with the facts adduced from previous hearings.

#### **b) Parents whose rights have not been terminated, including putative fathers**

If the court-approved plan is to reunify the child with a parent, whether or not the child lived with the parent prior to placement into foster care, it is essential for that parent to participate in the review. Parents can provide the court with important information concerning their perception of problems encountered in completing tasks or obtaining services, difficulties encountered in working with the agency, concerns they may have regarding the care of their children, and information about potential foster or adoptive placements. In addition, parents must be present in court to receive information from the

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court and agency. Finally, one of the purposes of the review hearing is to modify the case plan as appropriate, which affects the rights and responsibilities of the parents.

Even where no efforts are to be made toward reunification, the parents' participation can be important to the planning process, and until their rights are terminated, they have the right to participate in the review hearing.

**Persons who should always be present at review hearings:**

- Judge
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Indian custodian, child's tribe and attorney, if applicable
- Foster parents
- Assigned case worker
- Attorney for parents (separate attorneys if conflict warrants)
- Guardian ad litem, attorney for guardian ad litem, and/or attorney for child
- Court reporter or suitable technology
- Security personnel
- Interpreter, if applicable

**c) Age-appropriate children**

Children should be present at some point during the hearing to give the judge the opportunity to observe them. Age-appropriate children can provide the court with information as to their perception of their needs, interests and concerns. Older children will often have questions regarding their circumstances, and their future. Their questions may be answered at review, and the opportunity to participate may allow a child to have a greater sense of self-determination. A court may choose to have children present only during portions of a

hearing. Special circumstances may infrequently justify the absence of children from an entire hearing.

**d) Indian custodian, child's tribe and attorney, if applicable**

An Indian child's tribe has the right to notice and the opportunity to participate in all hearings concerning the child.<sup>7</sup> For Indian children, the tribe often has information regarding the child and family that is critical to assisting the court in good decision-making regarding the child.

**e) Foster parents**

Foster parents who care for and observe children on a daily basis are often in the best position to describe the present status of a child. Foster parents should be present both to make this information available to the judge, and to give the judge the opportunity to observe the foster parents.

Idaho law requires the foster parents to be given notice of the planning hearing, but specifically provides that they are not parties to the action.<sup>8</sup> Because the review hearing is part of the planning process, the review hearing should be considered a planning hearing.

<sup>7</sup> ICWA, 25 U.S.C. §§1912(a), 1911(c).

<sup>8</sup> Idaho Code §16-1610(b).

**f) Assigned caseworker**

The caseworker with primary responsibility for the case must be present to provide the court with complete, accurate, and up-to-date information at the hearing. Judges should not continue or delay a review hearing due to lack of information or case involvement by a caseworker. When important facts are not known, the hearing should be reset for an early date, and, if necessary, appropriate subpoenas should be issued.

**g) Agency attorney**

It is important that the agency have effective representation at the hearing because the court's decisions concerning the case plan or permanency plan are crucial to its success. Important information is elicited at the review hearing and the record established at that time can be critical to later case outcomes; an attorney is needed to help develop the record and note important evidence. The agency attorney can further case progress by obtaining court ordered evaluations, excluding a perpetrator from a household, or obtaining information important to the case. Depending on the jurisdiction, the agency may be represented by the county prosecutor or the state attorney general.<sup>9</sup>

**h) Attorneys for parents (separate attorneys if conflict warrants)**

The presence of the parents' attorney at the review hearing is vital to make sure that the agency is carrying out its responsibility to assist the parents. The attorney needs to correct the record to avoid negative or inaccurate information about the parents. The attorney needs to make sure that the parents' interests and views are taken into account in all decisions on placement, visitation, services, and case plan modifications.

**i) Guardian ad litem, attorney for guardian ad litem, and/or attorney for child**

A well-trained legal advocate for the guardian ad litem and/or the child must be present to make sure that the child's interests are being protected and not being subordinated to the organizational needs of the agency or the convenience of agency personnel. The advocate also needs to ensure that the views of children are considered by the court.<sup>10</sup>

**j) Court reporter or suitable technology, security personnel, interpreter**

As in other stages of the hearing process, these staffing and equipment resources should be available for all review hearings. If a parent or other essential participant is not fluent in English, a qualified interpreter must be present.

**k) The following are persons whose presence may also be needed at reviews:**

- Extended family members
- Other custodial adults (such as representatives from residential facilities where a child is placed)
- Prospective adoptive parents (if other than the foster parents)
- Service providers
- Adult or juvenile probation officer or parole officer

<sup>9</sup> See Idaho Code §16-1605.

<sup>10</sup> See Idaho Code §16-1618, which provides for appointment of a guardian ad litem for the child, appointment of an attorney for the guardian ad litem, and/or appointment of an attorney for the child.



- School officials
- Other witnesses

### **l) Service providers**

Persons who provide services to the parents and children, such as therapists, teachers, and parenting instructors, can provide valuable information to the court concerning the family's progress and recommendations for additional services.

If a particular service provider is not available to attend the hearing, the court should make certain that the agency caseworker has obtained detailed information on the participation and progress of the parents in that service. Ideally, written reports should be provided to the court.

It is often helpful for all persons who are involved with the family to meet with each other at the review so that everyone understands case plan or permanency plan goals and the treatment needs of the family. The involvement of service providers at reviews helps to coordinate services with court-approved treatment goals.

## **5. Key Decisions the Court Should Make at the Review Hearing**

### **a) Whether there are parties who have not and should be joined in the proceedings.**

Information may become available as to a parent whose identity or whereabouts were previously unknown. An absent parent or putative father should be brought into the court process as soon as possible, and issues as to paternity should be resolved as soon as possible, to avoid later delays that could prolong a child's placement in foster care. In any case where a parent has not been brought into the proceedings, the court should inquire as to whether any new information has been discovered that would warrant further efforts to identify or locate the absent parent.

Information may also become available as to a child's possible Indian heritage. In any case where the court has reason to believe that the child may be of Indian heritage, the court should require the agency to investigate to determine whether the child is eligible for membership in an Indian tribe.<sup>11</sup>

### **b) If reunification is a long-term goal, whether the parents have complied with the case plan.**

The court should review information on the extent to which the parents have complied with the case plan. If the parents have not complied with the case plan, the court should review information on why the parents have not complied. If the reasons for non-compliance indicate a lack of effort on the part of the parents, it may be necessary to remind them of the prior court order, and explain that their continued non-cooperation may result in termination of their parental rights. The judge should also consider initiating contempt of court proceedings.

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<sup>11</sup> See the discussion regarding ICWA earlier in chapter VI, in Part A.1.

The reasons for non-compliance may indicate a need to modify or clarify the case plan. At the review the court can correct any misunderstood expectations. Before making the decision whether and how to revise the case plan, the court should specifically ask the parents on the record, whether they are willing and able to comply, and whether there are any changes they need that will enable them to address the issues that need to be resolved before the child can safely be returned home. Again, parents should also be informed of the risk of termination of parental rights or other permanent loss of custody should they fail to meet their responsibilities under the plan.

Reviewing the parents' progress on the case plan should be a two-step inquiry. For example, a parent may be required to participate in anger management classes. The first part of the inquiry is whether the parent completed the class. The second part of the inquiry is whether the parent is using the skills learned in the class to modify the parent's behavior. The review hearing should not be reduced to a simple checklist of services provided and services attended.

Good progress on the case plan may indicate a need to modify the placement of the child. For example, where the child was previously placed in the legal custody of the agency, but the parents have engaged in services and modified their behavior, it may be appropriate to return the child home under agency supervision. Poor progress on the case plan may indicate a need to modify the long-term goal for the child.

**c) If reunification is a long-term goal, whether the services set forth in the case plan or the responsibilities of the parents or other participants need to be clarified or modified due to new information or changed circumstances.**

It often becomes obvious at a review that the case plan should be changed to reflect changed circumstances or new information. Additional or different services may be needed than those identified in the original case plan. And, as noted above, non-compliance with the plan and the reasons for non-compliance may indicate a need to clarify or modify the plan.

**d) If reunification is a long-term goal, whether the child's placement (in agency custody or at home under agency supervision) should be modified.**

At the review hearings, the court should review the continued appropriateness of the original disposition. Ideally, as the efforts of the parents and agency resolve the problems identified in the case plan, state intervention can be "stepped down" – from placing the child in the legal custody of the agency, to placement in the child's home under the protective supervision of the agency, to allowing the child to remain in the home without agency supervision, and closing the case.

If the child is to be returned home under agency supervision, it may be appropriate to place conditions that must be satisfied for the child to remain in the home. They may include, for example, home inspections, drug testing, or continued participation in counseling or other services.

The case should not be “dropped down” from placing the child in the legal custody of the agency, to returning the child home and closing the case. Continued agency supervision after the child is returned home is necessary to ensure that reunification is successful, and to avoid the “revolving door” phenomena - where a child is returned home and the case is closed, only to have a new petition filed when the child is again subjected to parental neglect or abuse.

In other cases, state intervention may need to be “stepped up” – from placement of the child in the child’s own home under agency supervision, to placing the child in the legal custody of the agency. This may be necessary if there have been new incidents of abuse or neglect, where the parent has violated the terms or conditions of the child’s placement in the home, or where the parent is not complying with the aspects of the case plan intended to ensure the child’s safety and well-being while in the home. If the child is placed in the legal custody of the state for the first time at a review hearing, the court must make the same findings required before the court places a child in the legal custody of the state at the adjudicatory hearing. (*See Chapter \_\_ regarding disposition at the adjudicatory hearing.*)

In deciding whether the family can be safely reunited, the court should consider the following:

- the extent to which the parents have engaged in and benefited from services outlined in the case plan;
- the capacity and willingness of the parents to care for the child;
- the extent to which changed parental behavior allows for the child’s safe return home;
- the extent to which parental behavior may continue to endanger the child;
- the appropriateness of interactions between parents and children during visitation;
- and the recommendations of service providers.

If the court determines that a child should not be returned home, the court should identify the additional progress which would allow a safe family reunification.

**e) If reunification is a long-term goal, whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.**

When the case plan goal is family reunification, the agency should be held accountable for meeting its obligation to provide services to the family. The court should make specific factual findings as to what efforts the agency is making to eliminate the need for placement of a child and whether such efforts are reasonable. The court should identify any areas in which agency efforts are inadequate and set forth orders to address those inadequacies.

**f) Whether reunification should continue to be a long-term goal for the child.**

Not every case requires the same period of time to determine whether family reunification is possible. At review, it may immediately become clear that the case plan is no longer feasible. For example, a plan of reunification with a parent would no longer be feasible if the whereabouts of the parent were unknown for a substantial period of

time, if the parent were subject to long-term incarceration, or if the parent failed continuously over an extended period to remedy the problems that caused a child to be placed. To avoid unnecessary foster care, judges should not continue a goal of reunification after it is apparent that the goal cannot be achieved or cannot assure safety of the child.

**g) Whether the permanency plan needs to be modified as a result of new information or changed circumstances.**

The permanency plan should have identified the options for alternative permanent placement of the child, the advantages and disadvantages of each option, the option that is in the child's best interest, the actions necessary to implement that option, and deadlines for completing those actions. Often in the course of the case, new information arises, or circumstances change, resulting in a need to reassess the plan.

The new information or circumstances may result in a need for a broad reassessment, considering new options and redetermining which option for permanent placement is in the child's best interest. Or, the new information or circumstances may instead result in the need for fine-tuning the implementation plan for a previously identified placement goal, by modifying or clarifying the tasks to be completed and deadlines for completion.

**h) Whether the agency is making reasonable efforts to finalize a permanency plan for the child.**

Idaho law requires a permanency plan in every CPA case where the child is placed in the legal custody of the agency. If aggravated circumstances were not found, then the case plan must include an alternative permanency plan, so that there is an alternative plan in place if the reunification plan fails. If aggravated circumstances were found, then the case proceeds immediately with planning for the alternative permanent placement of the child.<sup>12</sup>

The agency should be held accountable for meeting its obligation to finalize an alternative permanent placement for the child. The court should make specific findings as to what efforts the agency is making to finalize a permanency plan and whether such efforts are reasonable. The court should identify any areas in which agency efforts are inadequate and set forth orders to address those inadequacies. As in any case, new information or changed circumstances may result in the need to modify the plan as the case progresses.

**i) If legal custody of the child is vested in the agency, whether the child is in an appropriate foster care placement which adequately meets the child's physical, emotional, educational and developmental needs.**

The court should review information on the behavior and overall adjustment of each child to his or her placement and school. The court should also be informed of the specific services being provided to meet each child's physical, emotional, educational and developmental needs.

<sup>12</sup> Idaho Code §§ 16-1610(c), 16-1608(e)(4).

At review, the court may receive information indicating that the needs of a child are not being met in the child's placement. For example, if the child's behavior is causing the possible disruption of a second foster home placement, it may be necessary for the court to direct the agency to pursue placement at a more specialized therapeutic foster home.

In some cases, a child experiencing difficulty in placement may be successfully maintained in that placement if additional services are provided. The child may require mental health counseling, a special education program at school, or other specialized services. The foster parent may benefit from respite care or training in managing difficult behaviors. If such services were not identified in the initial case plan or permanency plan, they should be court-ordered at the review.

When the court places a child in the custody of the agency, state law vests authority for the placement decision in the agency, subject to review by the court.<sup>13</sup> Federal law requires that placement authority be vested in the agency for the child to be eligible for federal funds.<sup>14</sup> It is unclear whether the child will lose eligibility for federal funds if the court orders a particular placement for a child when custody of the child is vested in the agency.

Presumably the child would not lose eligibility if the placement were a contested issue, and the court determined the issue based on evidence in the record or on a reasonable agreement of the parties. The U.S. Department of Health and Human Services has a website with questions and answers about ASFA, in which the USDHHS states that "[a]s long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow payments."<sup>15</sup> The court can also require the agency to include the child's foster care placement in the case plan or the permanency plan, and can reject a plan that includes an inappropriate placement. The case plan and permanency plan are discussed in further detail in earlier sections of this chapter.

**j) If legal custody of the child is vested in the agency, whether the terms of visitation need to be modified.**

Where reunification is a goal, and as parents successfully engage in services and modify their behavior, it may be appropriate to provide less restrictive, more extensive visitation. As the time for reunification approaches, there is a need to expand visits to include overnight visits in the parents' home. The court should review the terms of visitation at review to determine whether terms and conditions of visits should be modified. Even where reunification is not a goal, there may be instances where some contact between the parent and the child is in the child's best interest.

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<sup>13</sup> Idaho Code §15-1623(h).

<sup>14</sup> See 45 C.F.R. §1356.71(d)(1)

<sup>15</sup> See question and answer no. 13 at [www.acf.dhhs.gov/programs/cb/laws/qsett1.htm](http://www.acf.dhhs.gov/programs/cb/laws/qsett1.htm).

**k) If legal custody of the child is vested in the agency, whether terms of child support need to be set or adjusted.**

Parents who are able to pay should be expected to help cover the costs of foster care. Support amounts should either be reviewed or adjusted during review hearings. The court should take care to avoid financial burdens that interfere with family reunification. Particularly inexpedient are delays in setting support followed by retroactive lump sum support orders. These often make it impossible for parents to maintain or to obtain residential space in preparation for the child's return home.

**l) Whether any additional court orders need to be made to move the case toward successful completion.**

Additional orders may be needed to move the case toward successful completion. For example, if one parent has successfully completed services but the other has not, it may be possible to return the children to the one parent who has completed the case plan, subject to a protective order limiting the contact of the other parent.

**m) What time frame should be followed to achieve reunification or other permanent plan for each child.**

At the conclusion of the review, the court should always determine what additional actions are necessary to successfully complete the case plan or permanency plan goals and set forth reasonable time frames in which such actions should be completed. By setting deadlines, the court emphasizes the importance of time in the lives of children and makes clear the court's expectations. The time frames set by the court can later be used by the court to hold all parties accountable by requiring explanations when reasonable deadlines are not met.

**n) The time and date for the next hearing, and whether any orders are needed to prepare for the next hearing.**

Federal law requires the court to make case-specific findings as to whether the agency has made reasonable efforts to finalize the child's permanent placement at or before the due date for the permanency hearing. Federal law requires that a permanency hearing be held within one year from the date the child is considered to have entered foster care and at least once every twelve months thereafter. The date a child is considered to have entered foster care is the date the court found the child to come within the jurisdiction of the CPA, or 60 days from the date the child was removed from the home, whichever is first. If the deadline is not met, the child may lose eligibility for federal funds. Eligibility may be reinstated once the required findings have been made.<sup>16</sup>

State law requires that a permanency hearing be held within one year from the date the child is removed from the home or the date the child is found to be within the jurisdiction of the CPA, whichever occurs first. The permanency hearing can be combined with the review hearing. The agency is required to file a permanency plan with the court least five days before the hearing.<sup>17</sup>

<sup>16</sup> 42 U.S.C. §675(5)(c); 45 C.F.R. §1356.21(b)(2).

<sup>17</sup> Idaho Code §§ 16-1611(d), 16-1623(i).

If the federal deadline is not approaching, then the court should schedule another review hearing. If the deadline is approaching, then the court should order the agency to prepare and file a permanency plan, and schedule a permanency hearing prior to the deadline. There is more information about permanency hearings earlier in this chapter, in Part C.

The court should also enter any orders necessary to prepare for the next hearing. For example, transport orders may be necessary if a parent is in the custody of the Idaho Department of Corrections or county jail, or if a child is in the custody of the Idaho Department of Juvenile Corrections or in detention.

### **6. Submission of Reports to the Court**

The submission of pre-review reports by the agency and the guardian ad litem can serve the same purpose as predisposition reports. Report writing and submission assist the parties in analyzing the case, help the judge reach a decision, and help to document the facts and history of the case. It is important that reports be distributed to the parties well in advance of the review. This allows time for the parties to consider agency proposals, and allows the parties time to prepare for the hearing.

Recommended best practice is to require the agency and the guardian ad litem to file a written report with the court, and to serve copies of the report, at least five days prior to the review hearing, and to include this requirement in the order setting the review hearing. Recommended best practice is for the report to be verified, or in the form of an affidavit.<sup>18</sup>

The report should address each of the issues identified in the preceding section of this chapter, in Part D.5. Forms for pre-review reports should be carefully designed to assist judges to submit complete written findings of fact and conclusions of law. If judges are required to cover particular issues in orders of findings, the report should address each such issue. Accordingly, the form used for agency pre-review reports should be worded as precisely as possible to address the exact issues that need to be addressed by the judge.

### **7. The Court's Written Findings of Fact, Conclusions of Law, and Order at the Review Hearing**

The court should make written findings of fact and conclusions of law, in language understandable by the parties, with enough detail to document the progress of the participants on the case plan or permanency plan, and to support the court's actions. As in other stages of the proceedings, the burden of preparing findings can be sharply reduced by incorporating well-prepared reports submitted by the agency or other participants. It is particularly important that the court include an order modifying the case plan or permanency plan as appropriate, and ordering the participants to comply with the plan, and setting further proceedings. The court should include a finding as to

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<sup>18</sup> Idaho Code §16-1623(i), governing the duties of the agency, provides for the agency to submit information to the court that the court may at any time require. Idaho Code §16-1631, governing the duties of the guardian ad litem, makes specific provision only as to the disposition report, but includes provision for "such other and further duties as may be expressly imposed by court order."

which participants were present, and if any necessary participants were not present, a finding that proper notice was given.

## B. Resource Guideline

**It is recommended that 30 minutes be allocated for each review hearing.**

Hearing Activity	Time Estimate
1. Introductory Remarks	2 Minutes
<ul style="list-style-type: none"> <li>• introduction of parties</li> <li>• advisement of rights</li> <li>• explanation of the proceeding</li> </ul>	
2. Adequacy of Notice and Service of Process Issues	3 Minutes
3. Review/Modification of Case/Permanency Plan	10 Minutes
<ul style="list-style-type: none"> <li>• adequacy and appropriateness of current foster placement, including services to child and/or foster family</li> <li>• progress toward reunification or alternative permanent placement</li> <li>• new information or changed circumstances</li> <li>• changes to terms of visitation or child support</li> <li>• changes to case plan, including changes in the long-term</li> <li>• goal, issues to be resolved, services, tasks, or deadlines</li> <li>• changes to placement (in custody of agency, in home under agency supervision, or in home without agency supervision and close case)</li> </ul>	
4. Troubleshooting and Negotiations Between Parties	5 Minutes
<ul style="list-style-type: none"> <li>• confusion regarding specifics of the case plan, what is expected of parents or agency</li> <li>• visitation and child support issues</li> <li>• discuss need for additional orders to facilitate case progress</li> </ul>	
6. Issuance of Orders and Scheduling of Next Hearing	5 Minutes
<ul style="list-style-type: none"> <li>• preparation and distribution of orders to all parties prior to adjournment</li> </ul>	

## C. Conclusion

Review hearings are **critical** to the successful completion of the case plan or permanency plan. The key functions of the review hearing are to comprehensively assess the status of the case, to document the participants' progress on the case plan or the permanency plan, and to modify the case plan or the permanency plan based on the progress, or lack of progress, made by the participants. A well-devised plan, together with effective review, enables the court to ensure that the case moves forward to a timely and successful resolution, that protects the rights of the parties, and the best interests of the child.



### D. Checklist

#### **Persons who should always be present at the review hearing:**

- Judge
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Indian custodian, the child's tribe and attorney, if applicable
- Foster parents
- Assigned case worker
- Attorney for parents (separate attorneys if conflict warrants)
- Guardian ad litem, attorney for guardian ad litem, and/or attorney for child
- Court reporter or suitable technology
- Security personnel
- Interpreter(s), if applicable

#### **Persons whose presence may also be needed at the review hearing:**

- Extended family members
- Other custodial adults (such as a representative from a residential facility where a child is placed)
- Prospective adoptive parents (if other than the foster parents)
- Adult or juvenile probation officer or parole officer
- Service providers
- School officials
- Other witnesses

#### **Key decisions the court should make at the review hearing:**

- Whether there are parties who have not and should be joined in the proceedings
- If reunification is a long-term goal, whether the parents have complied with the case plan
- If reunification is a long-term goal, whether the services set forth in the case plan or the responsibilities of the parents or other participants need to be clarified or modified due to new information or changed circumstances.
- If reunification is a long-term goal, whether the child's placement (in agency custody or at home under agency supervision) should be modified.
- If reunification is a long-term goal, whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of the child.
- Whether reunification should continue to be a long-term goal for the child.
- Whether the permanency plan needs to be modified as a result of new information or changed circumstances.
- Whether the agency is making reasonable efforts to finalize a permanency plan for the child.
- If legal custody is vested in the agency, whether the child is in an appropriate foster care placement which adequately meets the child's physical, emotional, educational and developmental needs.

- If legal custody of the child is vested in the agency, whether the terms of visitation need to be modified.
- If legal custody is vested in the agency, whether the terms of child support need to be set or adjudicated.
- Whether any additional court orders need to be made to move the case towards successful completion.
- What time frame should be followed to achieve reunification or other permanent plan for the child.
- Time and date for the next hearing, and whether any orders are needed to prepare for the next hearing.

**Reports**

Reports should be verified or in the form of an affidavit, and should address all the key decisions to be made by the court.

- Agency permanency plan
- GAL report (optional)

**Findings of Fact, Conclusions of Law, and Order**

- Findings and conclusions, incorporating case plan, permanency plan, or other written reports as appropriate, in sufficient detail to support court actions.
- If any necessary parties are not present, findings that proper notice was given.
- Order modifying placement (in custody of agency, at home under agency supervision, or at home without agency supervision and close case) as appropriate.
- Order modifying case plan or permanency plan, as appropriate, and directing parties to comply with case plan or permanency plan, as modified.
- Order scheduling next hearing, and any other orders necessary to prepare for the next hearing.